

Before the
FEDERAL ELECTION COMMISSION

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SENSITIVE

In the matter of.

Oregon State Senator Jackie Winters; and

Jackie Winters for Congress 2004, Inc.

Respondents

MUR #

5411

COMPLAINT

ZUPANCIC FOR CONGRESS 2004, INC. (16869 SW 65th Ave. #120, Lake Oswego, Oregon 97035), (hereinafter "Complainant") a corporation organized and existing under the Oregon Revised Statutes, files this Complaint with the Federal Elections Commission in accordance with the provisions of 2 U.S.C. § 437g(a)(1) in the belief that Respondents violated provisions of the Federal Election Campaign Act of 1971, as amended, 2 U.S.C. §§ 431, *et seq.* and provisions of the Bipartisan Campaign Reform Act of 2002.

The primary purpose of Zupancic for Congress 2004, Inc., is to conduct the campaign related activities of candidate James D. Zupancic in Oregon's Fifth Congressional District. The apparent violation alleged herein represents a lack of compliance with the law by Respondents while Respondent Winters was both an elected state Senator in Oregon and a federal candidate for Oregon's Fifth Congressional District.

RESPONDENTS

SENATOR JACKIE WINTERS (herein "Winters"), 900 Court St. NE S-212, Salem Oregon 97301, is a state Senator in the Oregon State Senate.

JACKIE WINTERS FOR CONGRESS 2004, INC., P.O. Box 4760 Salem OR 97302, (hereinafter "the Committee"), is a political committee established to support the Candidacy of Jackie Winters in Oregon's Fifth Congressional District

FACTS

The facts supporting this Complaint are to be found in documents available to the public. On October 1, 2003, Respondents issued a press release announcing "her decision to seek the Republican nomination in the race for U. S. Congress in the Fifth District" (Exhibit "A"). On October 1, 2003, Respondents also filed federal candidacy papers with the Oregon Secretary of State (Exhibit "B") and on October 13, 2003 with the FEC (Exhibit "C"). Central to this Complaint is publication and distribution of an "End of Session Report" (hereinafter "Report") that Respondents made and distributed to an undetermined number of Oregon citizens both within and outside the boundaries of Respondent Winter's state Senate district after Respondent

Winters became a candidate for federal office. A copy of Respondent Winter's "End of Session Report" newspaper insert advertisement is attached to this Complaint (Exhibit "D"). Complainant is informed and believes, and thereupon alleges, that on or about October 12, 2003, the Report was distributed to Oregonians as an advertising insert to the *Salem Statesman-Journal*, a newspaper with a general circulation of approximately 55,000¹. The publication and distribution of the Report was paid for by "Friends of Jackie Winters", a state candidate political action committee (hereinafter "PAC") which receives and expends funds from prohibited corporate and other non-federal fund sources.

APPARENT VIOLATIONS

The crux of this Complaint is simple: Respondents violated federal election law because the publication and distribution of the Report to the public was paid for by prohibited non-federal funds and further was not reported in Respondent's quarterly Campaign Finance Reports in violation of the Bipartisan Campaign Reform Act of 2002 (hereinafter "BCRA").

I. Respondents Unlawfully Used Non-Federal Funds for a Federal Election Activity

Under BCRA, a candidate for federal office is prohibited from spending non-federal funds "for any Federal election activity." 2 U.S.C. §441i(e)(1)(A); 11 CFR § 300.61. "Non-federal funds" are funds that do not comply with the federal limitations and prohibitions (see 11 CFR § 300.2(f) and (j)), which would include contributions by corporations and labor unions (see 2 U.S.C. §441b) and contributions in excess of applicable dollar limitations (see 2 U.S.C. § 441a). "Federal election activity" includes:

[A] public communication that refers to a clearly identified candidate for Federal office (regardless of whether a candidate for State or local office is also mentioned or identified) and that promotes or supports a candidate for that office, or attacks or opposes a candidate for that office (regardless of whether the communication expressly advocates a vote for or against a candidate)[.] 2 U.S.C. § 431(20)(A)(iii); see also 11 CFR § 100.24(b)(3).

As indicated clearly at the bottom of the last page on the Report (see Exhibit "D"), and validated by the absence of any related expenditure disclosure in the Committee's 2003 Year-End FEC report, Respondents used state PAC funds to pay for the newspaper advertisement. Because Respondent Winters' state PAC contains "non-federal funds" (e.g. funds received from corporations/labor unions or funds received in amounts greater than the federal limits), such funds may not be used for a "Federal election activity." Therefore it is clear that the Respondents violated applicable FEC rules and/or regulations.

¹ The Oregon Blue Book, 2003 - The Oregon Blue Book is the state's official fact book and almanac. It contains listings and functional descriptions of government agencies and educational institutions. It also features an almanac, maps, facts about Oregon history and elections, as well as information on the arts, media, and other cultural institutions in Oregon. The print version of the Blue Book is published during odd-numbered years as required by ORS 177.120.

II. The Report Constituted "Federal Election Activity"

As defined above, the Report will constitute "Federal election activity," if it

- 1) Refers to a clearly identified candidate for Federal office, and
- 2) Promotes or supports a candidate for Federal office

The advertisement refers to a "clearly identified candidate for Federal office." The advertisement not only contains numerous references to Winters and her legislative record, but also five photographs of Winters.

III. The Report "Promotes or Supports a Candidate for Federal Office"

As noted above, the statutory definition of "Federal election activity" does not require that the "communication expressly advocates a vote for or against" the candidate; it is sufficient that the communication "promotes or supports" a candidate. This advertisement clearly does "promote or support" Respondent, a candidate for Federal office. Among other things, the Report states that Respondent:

- a) "kept [her] promise" to focus her energies on "working to provide Oregonians with access to affordable healthcare;"
- b) has long been "committed to doing [her] part to fund Oregon schools adequately;" and
- c) was sent to the Oregon Senate to "tackle the difficult issues and to preserve our quality of life here in Oregon."

The Report cites other legislative "accomplishments" and invites readers to contact Respondent with any questions.

If the "promote or support" standard in 2 U.S.C. § 431 is to have any practical effect, it must – at a minimum – embrace communications that extol the virtues and accomplishments of a federal candidate. Again, Congress has made plain that the Report need not expressly advocate a vote for the candidate. While the Report does not mention Respondent's candidacy for federal office, the clear effect of this advertisement is to promote and support Respondent. The Report does more than simply inform readers as to new bills enacted by the Oregon Legislature; it trumpets Respondent Winters' legislative record, background and integrity. If the Report was not designed to promote or support Respondent and her candidacy, it would not have included these positive statements about Respondent and her role in the legislative accomplishments.

Respondent Winters is not running for any other office; indeed, she is not up for re-election to her state Senate seat until 2006. Moreover, the geographic scope of the Report was far greater than Respondent Winters' Senate district, even though it would have been possible (and, presumably, less expensive) to distribute the Report only in the state Senate district. The only conceivable purpose (and effect) of distributing the Report outside the state Senate district was to promote and support Respondents throughout Oregon's Fifth Congressional District.

CONCLUSION

Complainant believes that none of the essential facts supporting this Complaint are disputable.

Respondents filed for federal office with the Oregon Secretary of State on October 1, 2003, and with the FEC on October 13, 2003 (within the required 15 days of becoming a federal candidate). Based on information and belief, during the month of October 2003, as a federal candidate, Respondents caused the attached Report to be distributed both within and outside the boundaries of her state Senate district. As outlined above, the Report constituted "Federal election activity," and "promoted or supported" Respondents' candidacy for federal office. For these reasons, Complainant believes that Respondents' use of state PAC funds to publish and/or distribute the Report is a violation of the prohibition against the expenditure of non-federal funds for federal election activities.

Respectfully Submitted on Behalf of Complainant:

J. T. Lyon Date: 12 day of February, 2004.
Devon Lyon, Esq.
Campaign Manager, Zupancic for Congress 2004, Inc.

Notary



STATE OF OREGON)

) ss.

County of Clackamas)

This instrument was subscribed and sworn to before me on this 12 day of February, 2004, by Devon Lyon, known or proven to me to be the person whose signature appears above.

Marcia Madsen

NOTARY PUBLIC FOR OREGON

My Commission Expires: 7-21-06

- End of Complaint -



Jackie Winters for Congress

FOR IMMEDIATE RELEASE CONTACT: Jackie Winters
OCTOBER 1, 2003 PHONE: 503-931-9936

**Winters Announces Decision on
U.S. Congress Race**

Salem, OR – State Senator Jackie Winters today announced her decision to seek the Republican nomination in the race for U.S. Congress in the Fifth District. She filed papers Wednesday with the Secretary of State.

"I am running for Congress in the Fifth Congressional district because I want to help the President succeed in improving education, creating jobs and protecting our quality of life," said Winters. "I have been honored to personally discuss with the President my support of his goals and ideas."

Jackie is best known through her small business, Jackie's Ribs, and through volunteer work in her community. Jackie prides herself on connecting with everyday Oregonians... as a mother, grandmother, small business owner, community volunteer and legislator; she has a proven track record of making a difference for all of us.

Former Governor Victor Atiyeh is her Honorary Campaign Chairman and Dick Withnell, a prominent Salem businessman, is serving as her Finance Committee Chair.

"I am honored by their support which reflects our working relationships together to build a better Oregon," stated Winters. Jackie worked as an Assistant to the Governor/Ombudsman in the Atiyeh administration and volunteered on local community projects with Withnell.

Jackie has also received numerous awards for her community and legislative service. Most recently she Jackie was awarded Oregonian for Food and Shelter's "All Star Award" and is the first recipient of the Children and Families Commission's "Guardian Award" for her work during the recent legislative session.

Jackie lives in Salem with her husband of 33 years. She has four grown boys and 11 grandchildren. Jackie is a first term state senator and previously served in the Oregon House of Representatives. She serves as a Board member for the Salem Area Chamber of Commerce.

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OFFICE OF THE SECRETARY OF STATE

NEWS RELEASE

BILL BRADBURY

For Immediate Release:
October 1, 2003

Contact: Margie Franz
Elections Division
(503) 986-1518

The following individuals have filed for partisan office for the Primary Election of May 18, 2004:

Name and Address	Party	Office
Pavel Goberman PO Box 1664 Beaverton OR 97075	Republican	United States Senate
Jackie Winters PO Box 4760 Salem OR 97302	Republican	<u>Representative in Congress, District Five</u>

Exhibit "B"

FEC FORM 2 STATEMENT OF CANDIDACY

1. (a) Name of Candidate (in full) Jackie Winters		2. Identification Number
(b) Address (number and street) PO Box 4760		<input type="checkbox"/> Check if address changed
(c) City, State, and ZIP Code Salem, OR 97302		3. Is This Statement <input checked="" type="checkbox"/> New <input type="checkbox"/> Amended (A)
4. Party Affiliation RBP	5. Office Sought U.S. House	6. State & District of Candidate Oregon 5th District

DESIGNATION OF PRINCIPAL CAMPAIGN COMMITTEE

7. I hereby designate the following named political committee as my Principal Campaign Committee for the **2004** election(s).
(year of election)

NOTE: This designation should be filed with the appropriate office listed in the instructions.

(a) Name of Committee (in full) Jackie Winters for Congress 2004, Inc.
(b) Address (number and street) 2725 12th St., SE
(c) City, State, and ZIP Code Salem, OR 97302

DESIGNATION OF OTHER AUTHORIZED COMMITTEES

(including Joint Fundraising Representatives)

8. I hereby authorize the following named committee, which is NOT my principal campaign committee, to receive and expend funds on behalf of my candidacy.

NOTE: This designation should be filed with the principal campaign committee.

(a) Name of Committee (in full)
(b) Address (number and street)
(c) City, State, and ZIP Code

DECLARATION OF INTENT TO EXPEND PERSONAL FUNDS (House or Senate Only)

9. I intend to expend personal funds exceeding the threshold amount (see 11 C.F.R. 400.9) by

9A	0.00	for the primary election, and
9B	0.00	for the general election.

If you do not intend to expend personal funds exceeding the threshold amount for either election, you must enter "0.00" for each.

I certify that I have examined this Statement and to the best of my knowledge and belief it is true, correct and complete.

Signature of Candidate <i>Jackie Winters</i>	Date <i>10/13/03</i>
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NOTE: Submission of false, erroneous, or incomplete information may subject the person signing this Statement to penalties of 2 U.S.C. 5437g.

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Exhibit "c"

Jackie
WINTERS
State Senator

End of Session REPORT

“ *I am honored to serve you
and enjoyed working with
so many of you on the issues
facing our state.* ”

Jackie

INSIDE THIS REPORT

- ✓ Transportation package creates jobs
- ✓ Protecting citizens against identity theft
- ✓ Access to vital services for seniors
- ✓ Keeping the school doors open

Exhibit "D"



Getting Oregon back to work

The legislature recognizes the need to help small businesses provide health insurance to its employees that is affordable and that covers a wide array of services. Passage of legislation this session that accomplished this goal was a huge triumph for small business owners locally and around the state. (HB 2537)

One of the best ways to get Oregon back to work is to ensure that roads and bridges throughout the state are safe and in good condition. As you probably know, Oregon's roads and bridges are in need of repair. Republicans and Democrats, business leaders and many citizens from across the state joined together passing the largest public works and job creation bill of the legislative session. (HB 2041)

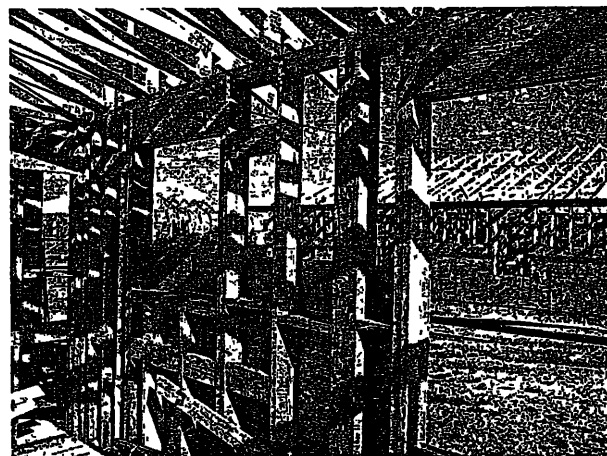
Protecting Oregonians

Identity theft is a growing problem in our community and once again the Legislature found itself strengthening laws against identity theft. Six bills were signed into law by the Governor including:

- Extends crime of fraudulent use of payment cards and increases penalties for repeat offenders (HB 3317)
- Makes it a felony to produce unlawful identification cards (HB 3318)
- Adds identity crimes to the state anti-racketeering law (HB 2119)

Many families in our community have suffered with the terrible tragedy of loved ones killed by a drunk driver. This session, penalties were doubled for drunk drivers committing manslaughter. For example a first time offender would spend three years in jail, which is up from the current 18-month sentence. (SB 421)

Crime victims won a huge victory with the passage of SB 610 which allows the victims of crime the right to take unpaid leave from work, without the fear of losing their job, to attend the trial against those who committed the crime. Also, state courts must take into account work schedules when setting trial dates. There are some exemptions, businesses with fewer than six employees are exempt and other employers will be allowed to limit the amount of time that can be taken off.

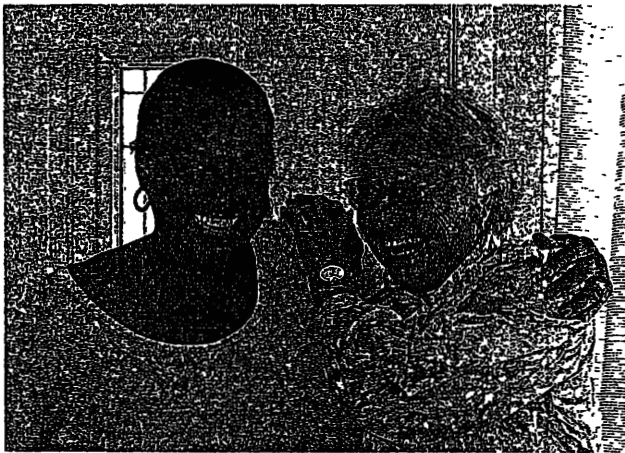


*“You didn't send me
tough decisions. Yo
the difficult issues a
of life here in Oregu*

Caring for those in need of our help

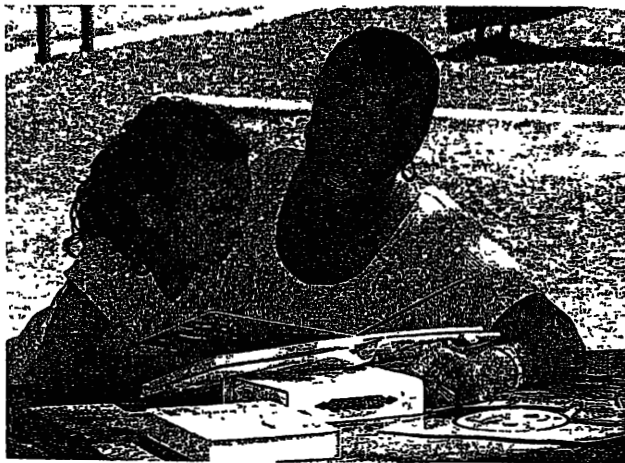
These are tough times for families in Oregon and one thing families should not have to worry about is whether or not they have access to health care. I promised you that I would focus my energies this session on working to provide Oregonians with access to affordable health care. I kept that promise.

As the Chair of the Ways and Means Subcommittee on Health and Human Services, I worked with representatives of the health care community and citizens to make certain that Oregonians have access to health care and prescription drugs. Working together we were able to re-structure the Oregon Health Plan so our most vulnerable citizens, seniors and children, had continued access to affordable health care. (HB 2511)



Senate Bill 875 allows the state to purchase prescription drugs in bulk giving seniors access to prescription drugs at the lowest possible price. (SB 875)

We were also able to provide temporary assistance to doctors in rural parts of the state who have been hit hard with increased malpractice insurance rates while enacting legislation to improve on patient safety... so the number of medical miracles continues to grow, not the number of medical mistakes. (HB 2349, HB 3630)



Focus on education

As the mother of four boys who attended Oregon public schools, I have long been committed to doing my part to fund Oregon schools adequately. With the economy in Oregon under stress, I believe that our state budget should reflect the priorities of our citizens and that's why I stood up for education and supported a \$5.2 billion budget that keeps the school doors open for a full academic year. (HB 5077)

Additionally, with Oregon's economy sputtering I believe investing in our community college system is necessary. Many students and unemployed workers are accessing training and re-training opportunities through our community colleges. Money was allocated to the Legislative Emergency Board to help bolster the community colleges throughout the state. (HB 5009)

Congratulations to the students in our area who once again have performed exceptionally well on SAT and ACT tests! We have a lot to be proud of with our students. Working together, we can ensure their continued success.

*...the Senate to duck
...it me there to tackle
...to preserve our quality
Jackie*

Jackie Winters
State Senate

Dear Friends

When I ran my campaign to represent you in the State Senate I promised to have as my guide three basic principles

1. Increase education funding to help our kids compete more effectively,
2. Protect our most vulnerable citizens by continued access to affordable health care, and
3. Provide the necessary resources to ensure public safety.

It's no secret the 2003 legislative session was one of the most difficult in our state's history. With a sagging economy, our state's general fund budget lost about 20% of our normal revenues. This crisis situation brought the legislature many challenges – but it also presented some opportunities to demand some greater efficiency from government.

As the sub-committee chair of Human Services on the Joint Ways and Means Committee, I worked with my colleagues to re-structure programs to better serve the public. We did this with care and compassion – but with an eye for efficiency. After many tough decisions, we reduced the Human Services budget by approximately \$160 million from the 2001-03 Legislatively Adopted Budget.

But as the state's economy continued to suffer, and as revenues to the state continued to shrink, I was forced to face the reality of our ability to protect our state's most vulnerable citizens: school children and Oregon families in poverty.

With the poverty rate for children under 18 the highest it has been since 1994, I simply could not shut the door on these Oregonians. It goes against everything I believe in as a fellow Oregonian. Because of this situation, I voted for the temporary surcharge on income taxes.

As a result, schools received the money required to keep classrooms open and we protected access to vital health care services for the neediest children and families. We also provided the necessary funding to provide adequate public safety.

Again, the 2003 legislative session was extremely difficult. But you didn't send me to the Senate to duck tough decisions. You sent me there to tackle the difficult issues and to preserve our quality of life here in Oregon.

In this End of Session report, you will hear more specifics about some of the actions we took in these difficult economic times and some of the accomplishments we were able to make. If you have any questions, please don't hesitate to give me a call. My door is always open.

Sincerely,

Jackie
Jackie Winters



Jackie
WINTERS
State Senator

State Capitol, Salem, Oregon 97310
503-986-1710

Not paid for at taxpayer expense.
Authorized and paid for by Friends of Jackie Winters.

IMPORTANT PHONE NUMBERS

Police and Fire Emergency Number 800-451-7000
Poison Control 800-451-7000

SALEM

Police Non-Emergency Number 503-588-5000
Drug Enforcement 503-588-5000
City Hall – Mayor's Office 503-588-5000
TIPS Line 503-588-5000
Library 503-588-5000
Central Library 503-588-5000
West Salem Branch 503-588-5000

INDEPENDENCE

City Hall 503-838-1000
Library 503-838-1000
Police Non-Emergency 503-838-1000

MONMOUTH

City Hall 503-838-0700
Library 503-838-1900
Police Non-Emergency 503-838-1100
Senior Citizen Center 503-838-5600

TURNER

City Hall 503-743-2100
Police Non-Emergency 503-743-2500

MARION COUNTY

Marion County Courthouse
Board of Commissioners 503-588-5200
Sheriff Non-Emergency Number 503-588-5000

POLK COUNTY

Polk County Courthouse
Board of Commissioners 503-623-8100
Sheriff Non-Emergency Number 503-623-9200

